



TERMINATION CHECKLIST AND CONSIDERATIONS

Use this checklist to identify your reason(s) for terminating an employee. This list will also help you figure out if your reason(s) are legal and fair.

Termination for Misconduct

- Was there a fair and complete investigation? Is it documented?
- Are there credible witnesses to substantiate the company's position?
- Have all employees found to have committed the same offense also been terminated?
- Is the misconduct severe enough for a termination?
- Was the employee given a reasonable opportunity to tell their side of the story?
- Have you considered any mitigating circumstances suggesting a lesser penalty?

Termination for Performance Reasons

- Has the poor performance been documented?
 - Performance review?
 - Performance communications to the employee (like emails)?
 - Internal emails?
- Has the employee been warned and given a reasonable opportunity to correct the performance problems?
- Has the company followed its written procedures/guidelines (or unwritten practices) for addressing performance issues?
- Have other employees exhibiting the same performance problems also been terminated?
- Have you given the employee an opportunity to explain whether there are mitigating circumstances which have affected their performance (e.g., death in family, illness, etc.)?
- Who observed the poor performance?
 - Has the performance problem been observed by more than just one supervisor?
 - Has this issue been observed by previous managers?
- Is the poor performance recent?
- Does the employee have a job description to which their performance can be compared?
- Have you considered any evidence that contradicts the allegation of poor performance, such as:
 - Positive reviews or commendations?
 - Receipt of performance bonuses?
 - Pay raises?
 - Promotions?
 - Other performance-based incentives?





Public Policy Considerations

Is the termination based on any of the following? The answer should be no.

- Reporting or threatening to report any violation of a rule or regulation?
- Refusing to commit an illegal act?
- Expressing a political belief, opinion, or otherwise engaging in protected speech?
- Filing a claim for workers' compensation benefits?
- Campaigning for safer working conditions?
- Engaging in union-organizing activities?
- Asserting any right protected by a statute?
- Opposing any policy or practice made unlawful by statute?
- Participating in any claim brought pursuant to a protected statutory right?

Wage/Benefit Eligibility Considerations

Is the employee being terminated to avoid any of the following? The answer should be no.

- Payment of retirement or pension benefits?
- Payment of commissions or a bonus?
- Vesting of stock options?

Protected Group/Discrimination Considerations

Have any of the following factors played a role in the decision to terminate the employee? The answer should be no.

- Race?
- National origin?
- Sex?
- Marital status?
- Pregnancy?
- Religion?
- Age?
- Physical or mental impairment? (Is employee able to perform the essential functions of the job with or without reasonable accommodation?)
- Veteran status?
- Sexual orientation?